

5.7 Forward Contract Merchant

The Parties acknowledge that the BGS-FP Supplier and the Companies are Forward Contract Merchants. Margin payments, settlement payments, or posting of Margin collateral are not avoidable and the Non-Defaulting Party is otherwise entitled to the benefits of the Safe Harbor Provisions of the Bankruptcy Code with respect to such payments or collateral.

5.8 Integrated Transaction

To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

ARTICLE 6. CREDITWORTHINESS

6.1 Applicability

The BGS-FP Supplier agrees that it shall meet the creditworthiness standards of this Article 6 at all times during the Term. Without limitation of the foregoing, the BGS-FP Supplier shall, upon written request by a Company, affirmatively demonstrate its compliance with the creditworthiness standards set forth hereunder. The Companies may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner.

6.2 Creditworthiness Determination

The BGS-FP Supplier may submit and maintain a security deposit in accordance with Sections 6.4 and 6.6 in lieu of submitting to or being qualified under a creditworthiness evaluation. The BGS-FP Supplier shall have the opportunity to petition the Companies to re-evaluate its creditworthiness whenever an event occurs that the BGS-FP Supplier believes would improve the determination made by the Companies of its creditworthiness. The Companies' credit re-evaluation must be completed as soon as possible but no later than thirty (30) days after receiving a fully documented request. The Companies must provide the rationale for its determination of the Credit Limit and any resulting security requirement. The Companies must perform their credit re-evaluation and associated security calculation in a non-discriminatory manner. The BGS-FP Supplier shall provide unrestricted access to audited financial statements; provided, however, that if audited financial statements are not available,

the Companies may accept other types of financial statements. As set forth in Section 6.4, if a BGS-FP Supplier chooses to rely on a Guarantor, the creditworthiness evaluation will be conducted on the Guarantor.

6.3 Mark-to-Market Credit Exposure Methodology

To calculate the daily exposure for the BGS-FP Supplier, the Mark-to-Market ("MtM") credit exposure methodology will be used. The initial "mark" for each month of the Delivery Period was determined on the Auction Date based on the available Forward Market Prices. At the time the auction was completed, the MTM credit exposure for the BGS-FP Supplier was equal to zero (0). Subsequently the differences between the "mark" derived from Forward Market Prices on the valuation date and the initial "mark" will determine daily exposure for the supplier. The total MTM credit exposure will be equal to 1.1 times the sum of the MTM credit exposures for each billing month. The methodology used by the Companies to calculate the MtM Exposure Amount is set forth in Appendix D.

6.4 Credit Limit

The following criteria constitute the Companies' creditworthiness requirements for the BGS-FP Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) will be used.

(i) The following requirements shall apply in the event the BGS-FP Supplier or its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the BGS-FP Supplier cannot meet the following requirements, it shall be required to post cash or a Letter of Credit for the Total Exposure Amount.

(a) If the BGS-FP Supplier chooses not to rely on a Guarantor to satisfy the requirements of this Section 6.4(i), the requirements of this subsection 6.4(i)(a) shall apply. For the BGS-FP Supplier to be granted an unsecured line of credit, the BGS-FP Supplier: (1) must be rated by at least two of the following rating agencies: S&P, Moody's or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) of at least "BBB-" from S&P, "Baa3" from Moody's or "BBB-" from Fitch (each a "Minimum Rating"). If the BGS-FP Supplier is rated by only two rating agencies, and the

ratings are split, the lowest rating will be used. If the BGS-FP Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The level of the Credit Limit to cover the Total Exposure Amount will be determined in accordance with Table A:

Table A

| Credit Rating of the BGS-FP Supplier or the Guarantor | | | Credit Limit (equals the Lesser of TNW % and Credit Limit Cap, as set forth below) | |
|---|--------------|--------------|---|------------------|
| S&P | Moody's | Fitch | TNW % | Credit Limit Cap |
| A- and above | A3 and above | A- and above | 16% of TNW | \$80,000,000 |
| BBB+ | Baa1 | BBB+ | 10% of TNW | \$60,000,000 |
| BBB | Baa2 | BBB | 8% of TNW | \$40,000,000 |
| BBB- | Baa3 | BBB- | 6% of TNW | \$20,000,000 |
| Below BBB- | Below Baa3 | Below BBB- | 0% of TNW | \$0 |

The BGS-FP Supplier will be granted a single Credit Limit to be applied to all BGS Supply agreements between the BGS-FP Supplier and the Companies. The BGS-FP Supplier will be required to post cash or a Letter of Credit for the Margin due the Companies as set forth in Section 6.6.

(b) If the BGS-FP Supplier chooses to rely on a Guarantor to satisfy the requirements of this Section 6.4(i), the requirements of this subsection 6.4(i)(b) shall apply. If the BGS-FP Supplier has a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total

Exposure Amount that could be provided through the financial Guaranty (will be determined in accordance with Table A.

The BGS-FP Supplier will be granted a Credit Limit equal to the lesser of: (i) the amount of the Guaranty as provided to the Companies at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Companies during the Term or (ii) the Maximum Credit Limit applicable to the Guarantor's credit rating. The BGS-FP Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Companies have made a Margin Call but before the BGS-FP Supplier has posted the required Margin. Notwithstanding anything herein to contrary, the BGS-FP Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Companies and upon the Companies' receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the BGS-FP Supplier may request a return of Margin in accordance with Section 6.6(iii). The BGS-FP Supplier will be required to post cash or a Letter of Credit for the Margin due the Companies as set forth in Section 6.6.

(c) As an alternative to satisfying the requirements of subsections 6.4(i)(a) or 6.4(i)(b), the BGS-FP Supplier may post cash or Letter of Credit for the entire Total Exposure Amount.

(ii) The following standards shall apply in the event neither the BGS-FP Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the BGS-FP Supplier cannot meet the following requirements, the posting of cash or a Letter of Credit for the Total Exposure Amount will be required at the time of or prior to the execution of this Agreement.

(a) The BGS-FP Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for BGS-FP Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the BGS-FP Supplier, to evaluate the evidence of creditworthiness submitted by the BGS-FP Supplier; or

(b) The BGS-FP Supplier's Guarantor shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for Guarantors of BGS-FP Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the BGS-FP Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.

(iii) If neither the BGS-FP Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States, the BGS-FP Supplier or its Guarantor, in addition to all documentation required elsewhere in this Section 6.4, shall supply the following as a condition of being granted a Credit Limit.

(a) For the BGS-FP Supplier: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in which the BGS-FP Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the BGS-FP Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of the BGS-FP Supplier that the person executing the Agreement on behalf of the BGS-FP Supplier has the authority to execute the Agreement and that the governing board of the BGS-FP Supplier has approved the execution of the Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of the BGS-FP Supplier that the BGS-FP Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or recourse to the BGS-FP Supplier, to evaluate the sufficiency of the documents submitted by the BGS-FP Supplier.

(b) For the BGS-FP Supplier's Guarantor: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has

the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as this Guaranty. The Company shall have sole and absolute discretion, *without liability or recourse to the Guarantor or the BGS-FP Supplier*, to evaluate the sufficiency of the documents submitted by such Guarantor.

6.5 Sample Guaranty

A Sample Guaranty is provided in Appendix F. The Companies are willing to consider alternative forms of a Guaranty, subject to negotiation and final determination of acceptability by the Companies.

6.6 Posting Margin and Return of Margin

(i) If at any time during the Term, the Total Exposure Amount exceeds the BGS-FP Supplier's Credit Limit, the Companies, on any Business Day, may request that BGS-FP Supplier provide Margin in the form of cash or a Letter of Credit, in an amount equal to the Margin Requirement (a "Margin Call"). The Margin Requirement will be rounded up to the nearest \$100,000.

(ii) If the BGS-FP Supplier receives written notice for Margin from the Companies by 1:00 p.m. EPT on a Business Day, then the BGS-FP Supplier shall post Margin the next following Business Day if posting cash and the second Business Day if posting a Letter of Credit; provided, however, that the Companies may agree in writing to extend the period to provide Margin. If the BGS-FP Supplier receives notice for Margin from the Companies after 1:00 p.m. EPT on a Business Day, then the BGS-FP Supplier must post Margin the second Business Day following the date of notice unless the Companies agree in writing to extend the period to provide Margin. The Companies will not unreasonably deny a request for a one (1) Business Day extension of such period. In the event that the BGS-FP Supplier fails to provide Margin when due, then an Event of Default under Article 5 will be deemed to have occurred and the Companies will be entitled to the remedies set forth in Article 5.

(iii) Margin held by the Companies in excess of the required Margin, as determined above, will be returned to the BGS-FP Supplier upon receipt of a written request by

the BGS-FP Supplier. If the BGS-FP Supplier posted cash and notice is received by 1:00 p.m. EPT on a Business Day, the Margin will be returned by the next following Business Day. If the BGS-FP Supplier posted cash and notice is received by the Companies after 1:00 p.m. EPT on a Business Day, the Margin shall be returned by the second Business Day following the date of notice. If the BGS-FP Supplier posted a Letter of Credit, the Margin shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank. In the event that the Companies fail to return the Margin when due in accordance with this Article 6, then an Event of Default under Article 5 will be deemed to have occurred and the BGS-FP Supplier will be entitled to the remedies set forth in Article 5 unless the BGS-FP Supplier agrees in writing to extend such period for providing the Margin. The BGS-FP Supplier will not unreasonably deny a request for a one (1) Business Day extension of the period for returning the Margin.

6.7 Grant of Security Interest/Remedies

To secure its obligations under this Agreement and to the extent that the BGS-FP Supplier delivered Margin or collateral hereunder, the BGS-FP Supplier hereby grants to the Companies a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Companies. The BGS-FP Supplier and the Companies agree to take such action as reasonably required to perfect the secured Party's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after or during the occurrence of an Event of Default caused by the BGS-FP Supplier, the Companies may do any one or more of the following: (i) exercise any of the rights and remedies of the Companies with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise their rights of setoff against any and all property of the BGS-FP Supplier in the possession of the Companies whether held in connection with this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply; (iii) draw on any outstanding letter of credit issued for the Companies' benefit; and (iv) liquidate all security held by or for the benefit of a Company free from any claim or right of any nature whatsoever of the BGS-FP Supplier, including any equity or right of purchase or redemption by the BGS-FP Supplier. The Companies shall apply

the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the BGS-FP Supplier's obligation under this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply (the BGS-FP Supplier remaining liable for any amounts owing to the Companies after such application), subject to the Companies' obligation to the return of any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the BGS-FP Supplier, as set forth on Appendix A hereto.

If to the Companies, to:

With a copy to:

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

6.8 Security Instruments

6.8.a Provision of Security Instrument

At the BGS-FP Supplier's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

- (i) Cash; or

(ii) An irrevocable, transferable, standby letter of credit acceptable to the Companies issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P or Moody's (a "Letter of Credit"). (A standard format for the Letter of Credit is provided in Appendix F.) The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Companies receive notice from the issuing financial institution that the Letter of Credit is being cancelled, the BGS-FP Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to the Companies at least thirty (30) days before the cancellation date of the original Letter of Credit. If the BGS-FP Supplier fails to supply a substitute Letter of Credit as required herein, then the Companies will have the right to draw on the existing Letter of Credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which the BGS-FP Supplier has obtained a Letter of Credit falls below levels specified in this Article 6, the BGS-FP Supplier shall have two (2) Business Days following written notice by the Companies to obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards unless such period is extended in writing by Companies.

6.8.b BGS-FP Supplier Rights if Companies are Rated Below Investment Grade

If at any time during the Term the applicable rating of any two (2) of the Companies is below the Minimum Rating, as determined in accordance with Section 6.4, the BGS-FP Supplier may provide written notification to the Companies requiring that the Companies transfer to a Qualified Institution, within two (2) Business Days, any cash in the Companies' possession or held on the BGS-FP Suppliers' behalf that had been posted as a Security Instrument by the BGS-FP Supplier under the terms of this Agreement. The Qualified Institution will hold the cash collateral in an interest-bearing account pending release of the funds pursuant to the terms of this Agreement. Interest will be allocated pro rata to the BGS-FP Supplier. The BGS-FP Supplier will be entitled to the rights described in this Section 6.8.b only for so long as the applicable rating for any two of the Companies is below the Minimum Rating.

6.9 Maintenance of Creditworthiness

6.9.a Reporting of Changes

The BGS-FP Supplier shall promptly notify the Companies: (i) of any changes in its credit rating or the credit rating of its Guarantor, (ii) if the BGS-FP Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and (iii) of any materially adverse change in its financial condition or in the financial condition of its Guarantor. The BGS-FP Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Companies.

6.9.b Change in Credit Standing

The Companies will re-evaluate the creditworthiness of the BGS-FP Supplier whenever they become aware, through the provision of notice by the BGS-FP Supplier or otherwise, of a decrease in the BGS-FP Supplier's or Guarantor's credit rating. If the lowest credit rating (whether corporate issuer rating or unsecured senior debt rating) used to determine the BGS-FP Supplier's Credit Limit decreases, the BGS-FP Supplier shall provide an additional Security Instrument to the Companies *(or increase the value of the existing Security Instrument)* in accordance with Section 6.4.

6.10 Calling on Security

The Companies may call upon the Security Instrument posted by the BGS-FP Supplier if the BGS-FP Supplier fails to pay amounts due to the Companies pursuant to this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply after all of the following events occur:

- (i) Written Notice of Default is provided to the BGS-FP Supplier; and
- (ii) Any applicable cure period ends.

The foregoing notwithstanding, the Security Instrument posted by the BGS-FP Supplier shall become due automatically, and may be called upon by the Companies, without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of Section 5.1.

6.11 Interest on Cash Held by Companies

The Companies will pay simple interest (not compounded) calculated at the lower of the Interest Index or six (6) percent per annum on all cash posted by the BGS-FP Supplier with the Companies pursuant to this Agreement. Each Billing Period the Companies will prepare a statement of interest amounts due to the BGS-FP Supplier. The statement will be sent to the BGS-FP Supplier within three (3) Business Days after the end of the Billing Period via overnight mail, facsimile or other expeditious means. The Companies shall make interest payments on the first Business Day after the fifth (5th) day of each Billing Period.

6.12 Confidentiality

Information supplied by the BGS-FP Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The BGS-FP Supplier will be given prompt notice of any request by a third party to obtain confidential information related to the BGS-FP Supplier's creditworthiness.

6.13 No Endorsement of BGS-FP Supplier

The Companies' determination that the BGS-FP Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the BGS-FP Supplier. The Companies will treat all BGS-FP Suppliers in a non-discriminatory manner and shall provide no preference to any BGS-FP Supplier.

6.14 Multiple BGS Supply Agreements

It is the intent of the Companies and the BGS-FP Supplier that, in the event the BGS-FP Supplier is a party to other agreements with a Company for the provision of BGS Supply, the Companies will calculate one (1) Margin applicable to all such agreements using the methodology set forth herein. The BGS-FP Supplier will have a single line of credit applicable to all BGS Supply agreements, and the Margin that is calculated is the Total Exposure Amount under all such contracts less the single line of credit.